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CURRENT TOPICS

Tax and Damages

THE majority judgments of the House of Lords in *British Transport Commission* v. *Gourley* (*The Times*, 9th December) have added a new tenet to the calculation of both general and special damages, especially the former. Already s. 2 of the Law Reform (Personal Injuries) Act, 1948 (which deals with the deduction of half of injury benefits) puts a strain on the mathematical capacity of solicitors and their managing clerks. Even judges have been known to approach the subject with hesitation. Now it seems that the corridors of assize courts, where so many cases are settled, will echo with P.A.Y.E. We respectfully agree with EARL JOWITT that it would be unfortunate if, as a result of this decision, the fixing of damages were to involve an elaborate assessment of tax liability, but we foresee that complications may arise from his observation that such an estimate would be none the worse if it was founded on broad lines. It will surely be necessary to differentiate between that part of the general damages which is based on the loss of future earnings and that which is based on pain and suffering, and the two are not always easily separable. While we cannot deny the justice of the decision, particularly where the element of loss of future earnings is substantial, we fear that the calculation of damages is to become even more speculative than it has been. It might be desirable for Parliament to lay down that no regard to tax liability shall be paid where the damages are less than, say, £5,000.

Mr. Attlee

THAT Mr. ATTLEE'S father was a solicitor and a quondam President of The Law Society and that Mr. Attlee himself is a member of the Bar gives us the excuse, if any is needed, for joining in the chorus of good wishes amid which he enters upon his retirement. After his twenty years' leadership of the Labour Party, most people, whatever their politics, are sorry to be without him. As Prime Minister he had Baldwin's political sagacity, patience and love of England without his fatal lethargy. He had Chamberlain's efficiency without his self-delusions. He had none of MacDonald's characteristics, which is probably why the Labour Party chose him. He had Bonar Law's contentment with doing a job well without bothering who got the credit, but he did not have Bonar Law's bad health. He had something of Asquith's and Balfour's humanistic approach to politics without their detachment from the common herd. He had Lloyd George's radicalism without certain shortcomings which, since Lloyd George was a solicitor, we will not dwell on. CHURCHILL and Attlee are not comparable but complementary and it was a fortunate chance for the country and for the world that they were brought together in the War Cabinet. Mr. Attlee records that he would probably have been appointed to the legal staff of either the Charity or the Ecclesiastical Commissioners if he had had a few more months' standing at the Bar. We are sure that things turned out for the best.

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Interest on Clients' Money

A RECENT inquiry by a member of the Association of Certified and Corporate Accountants as to the correct treatment of interest which is earned when clients' money is placed on deposit account by a solicitor is dealt with in the December issue of the *Accountants' Journal*. The writer states that the view taken by The Law Society is understood to be that where it is reasonably practicable to credit the clients with interest earned by their moneys on deposit, this must be done. Where, however, the sum on deposit is made up of a large number of small amounts which may vary from time to time, he continues, deposit interest may properly be credited to the solicitor's office account and can reasonably be regarded as being some small payment for the responsibility and trouble involved in taking care of clients' money. He quoted Sir Dennis Herbert's and Mr. P. H. Blackwell's work on Solicitors' Accounts in support of the view that the solicitor is entitled to take into consideration the fact, so far as it may be a fact, that balances are too small or held for too short a period to earn bank interest separately. The writer adds: "Where interest is earned on a mixed deposit and it cannot be allocated to particular clients for the reasons mentioned, the solicitor must make arrangements with the bank for such interest to be credited direct to his office account, because if it is instead credited to the clients' money account, there is no means whereby that interest can be withdrawn from the account except by express consent of the Council of The Law Society."

Protection from Seizures

THE consideration by the House of Lords in Committee of the Administration of Justice Bill called into being several amendments and some completely new clauses. No doubt there will be an opportunity before the Act comes into operation to comment on the most important of these, but on one matter our readers may like to have advance information because it removes a threat of impending anomaly apprehended in an article in our columns last week (*ante*, p. 844). The writer of that article pointed out that whereas the Bill, as introduced, raised the limit of protection from seizure of necessary goods to £20 in the case of county court executions, landlord's distraints and distresses in certain master and servant disputes, the figure was to remain at £5 for sheriffs' executions. While that article was in the press the Lord Chancellor was successfully moving the Committee of the House to delete the clause in question from among those grouped as "other provisions as to county courts," and to insert in the Part of the Bill headed "General provisions as to enforcement of judgments and orders" a new clause extending the proposed reform so as to cover as well cases affected by s. 8 of the Small Debts Act, 1845, in other words to seizure under any execution or order of any court against a judgment debtor's goods and chattels. The power of the Lord Chancellor by statutory instrument to increase the limit above £20 is preserved in the new clause.

Keeping Somebody Else's Rules

A FULL explanation of the working of the tribunal set up by the British Motor Trade Association to investigate alleged breaches of its rules is contained in an article by the secretary, Mr. K. C. JOHNSON-DAVIES, published in the current number of the *British Journal of Administrative Law*. Singled out for favourable comment in the majority report of the Monopolies Commission on Collective Discrimination, and described too, in the recent report on the tyre trade, the Association's enforcement procedure yet has its critics, and the secretary's article strikes us as defensive in tone. Mr. Johnson-Davies does not oppose (though he thinks it unnecessary) the Government proposal for a statutory scheme requiring registration of certain industrial practices and their justification before a judicial body. In regard to the present domestic tribunals, the author finds it illogical that Members of Parliament and of the Bar should dislike them, bearing in mind party discipline and the control exercisable by the Benchers of an Inn. If we may say so, these are hardly parallel cases when it is remembered that trade tribunals do not apparently confine themselves to investigating complaints against members of the trade association. The Administrative Law Reports bound with the same number of the Journal record a charge heard before the B.M.T.A. Price Protection Committee of conduct "which in the case of a member of the . . . association would constitute a breach of r. 27 (2)." The complainee in question did not appear, but the committee under its legal chairman found the charges not established.

Compensation for Compulsory Acquisition

MR. JAMES G. KEKWICK, in a paper which he read on 5th December to the Royal Institution of Chartered Surveyors, analysed the system of compensation for the compulsory acquisition of land embodied in the Acquisition of Land (Assessment of Compensation) Act, 1919, and considered the complications introduced by the Town and Country Planning Acts, 1947 and 1954. The system whereby the State was to acquire the development rights of all land for £300m. under the 1947 Act proved unworkable, Mr. Kekwick said. Under the 1954 Act the potentialities, or development rights, of land will henceforth be purchased as and when required for use, or for suppression if necessary to purchase them for this purpose. Under the 1954 Act in addition to compensation based on the existing use value and assessed under the 1845 and 1919 statutes, there is paid to the owner the whole of the unexpended balance of established development value. The principles applied under the 1919 statute, Mr. Kekwick said, were incapable of serious challenge on equitable grounds. As to the 1954 system, he doubted whether it would prove much more workable or last much longer than that of 1947. It would become recognised as increasingly unfair, more particularly in the future, when the value of development rights should tend to rise far above their 1947 levels. He concluded by suggesting as a less cumbersome, more easily understood and fairer alternative a return to compensation at market values assessed according to the principles of the 1919 Act, but with set-offs in respect of sums already paid under previous statutes.

"Two Guinea Counsel"

THE phrase "two guinea counsel" was coined by a defendant to a charge of shooting two policemen, when asked by the LORD CHIEF JUSTICE at the Central Criminal Court on 6th December whether he had sufficient money for a dock brief. None of the counsel who have in the past served their clients with a will whether the fee is one guinea or two need blush at the words of this defendant: "I have two guineas, but I do not think a two guinea counsel would be good enough for me." They may well smile at the folly of a young defendant who imagines that he can do better than one who might some day be Lord Chancellor, and at the lowest level knows much more about criminal law and advocacy than any lay defendant. In the old days, old lags who came up again and again for their short sentences knew from experience that it was better to take a chance with a bright-looking youngster than to rely on their own dubious talents. Not so the younger defendants of to-day. They are too clever by half.

THE REVALUATION AND THE NEW RATING ACT

THE completion of the first new valuation lists under the Local Government Act, 1948, and their transmission by the valuation officers of the Inland Revenue Valuation Department to the rating authorities which is now proceeding throughout the country has evoked a greater interest than any previous revaluation for several reasons. One is that, owing to the general inflation and universal assessment for the first time at full rental values, there will be general and heavy increases in assessments. Another is that, for the first time in history, there is a statutory discrimination between the assessments of dwelling-houses, which are to be based on 1939 rental values, and those of other classes of property, which are to be assessed at the far higher current rental levels. A third is the enactment in the Rating and Valuation (Miscellaneous Provisions) Act, 1955, of partial and total exemptions from rating of a far-reaching character. And a fourth is the introduction in the new Act of fairly revolutionary changes in procedure which have an important effect on the remedies available to ratepayers and appeal procedure.

In these circumstances it is only to be expected that practitioners—solicitors, rating surveyors and accountants—will be consulted by many clients in the future, both individual ratepayers and organisations of ratepayers such as ratepayers' associations and chambers of trade, many of which are fully alive to the broad effect of the changes, particularly as touching the interests of members. Advice will be needed, not only on the basic principles of rating, but also on the recent changes in the law and on tactics most suitable in launching proceedings under the new scheme.

LIABILITY FOR RATES

Rates are levied in respect of rateable property (Poor Relief Act, 1601, s. 1 (1)). Rateable property comprises principally houses and land, and land is interpreted in its widest legal sense and includes, besides all kinds of buildings and structures and fixtures, mineral workings, although mines are separately specified (*ibid.*, and the Rating Act, 1874, ss. 3, 7). Sporting rights when severed from the occupation of the land are also rateable (1874 Act, ss. 3, 6), and so are advertising stations, separately when separately occupied (Local Government Act, 1948, s. 56; Local Government Act, 1948 (Appointed Days) Order, 1955, para. 2; Advertising Stations (Rating) Act, 1889).

A rateable hereditament is rateable property in separate occupation, the occupier being the person in general liable for the rates on the hereditament. When such occupation exists, who is the occupier, and whether the property is really occupied or only owned without occupation has been the subject of much case law. The one essential distinction is between an occupier and a licensee, such as a lodger, who is not in paramount control of the hereditament (*Westminster City Council* v. *Southern Railway Co.* [1936], A.C. 511; 7 D.R.A. 137 (H.L.)). In many rating areas owners of smaller hereditaments are rated instead of the occupiers under a resolution of the rating authority (Rating and Valuation Act, 1925, s. 11 (1)). Such hereditaments must not have a rateable value in excess of £18, or £25 in certain large towns (as from 1st April, 1956: Local Government Act, 1948, s. 55; Local Government Act, 1948 (Appointed Days) Order, 1955, para. 2), except that a rating authority may continue the application of its "compounding" resolution to hereditaments of which the assessments are raised above the limits at the revaluation (up to an indicated level) (Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 4 (5)). Alternatively owners of rateable hereditaments (with rents payable at less than quarterly intervals) may agree with the rating authority to pay or collect rates (1925 Act, s. 11 (2)). There is provision for these enactments to be substituted for similar enactments in the Poor Rate Assessment and Collection Act, 1869, ss. 3 and 4 (London County Council (General Powers) Act, 1949, s. 43 (1), and Sched.) still applicable in London, but it is uncertain if this change will be effected on the 1st April next.

These occupiers and owners are the parties mainly interested in the new assessments and they are those who are entitled to notices of proceedings in respect of the valuation list required to be given to "the occupiers" (Local Government Act, 1948, s. 41, re-enacted with extensive alterations in the 1955 Act, s. 2 and Sched. I, Pts. I and II). They are also entitled to appear on the hearing of such proceedings (1948 Act, s. 48 (3)). Both they and the occupiers and owners of any part of a hereditament may object to a proposal for the alteration of a hereditament (s. 41 (3), as re-enacted, *supra*) and it is apprehended may make their own proposals. As technically there cannot be an occupier of part of a hereditament only, it may be intended to bring within this power a licensee who is not the occupier but has some kind of permanent use of the hereditament (*supra*). It is individual ratepayers from among these, and their organisations, who will be seeking advice when the effects of the revaluation are fully appreciated.

PARTIAL AND TOTAL EXEMPTIONS

Certain classes of hereditaments have been granted total or partial exemptions, particularly in the Rating and Valuation (Miscellaneous Provisions) Act, 1955. From the ordinary ratepayer's point of view the most important of these are: *Partial exemptions*—industrial hereditaments, freight transport hereditaments (the Rating and Valuation (Apportionment) Act, 1928, ss. 5–6; Local Government Act, 1929, s. 68); *Total exemptions*—scientific societies (the Scientific Societies Act, 1843), agricultural hereditaments, air raid defence works (Rating and Valuation (Air Raid Works) Act, 1938), and, under the 1955 Act, places of public religious worship, and certain structures for invalids and the disabled; *Limitations on rates recoverable*—charitable and similar organisations.

An industrial hereditament is a mine or mineral railway or a factory or workshop within the meaning of the Factory and Workshop Acts, 1901–1920, provided it is not used primarily in the latter case for a non-factory purpose. The essence of a factory or workshop (apart from those, such as quarries, specified in Sched. VI to the 1901 Act) is that it must be used for some form of manufacturing process, or "adapting for sale," involving making an article in some way a little different from what it was before. The purposes for which it must not be primarily used are those of a dwelling-house, a retail shop (e.g., by disposing of the bulk of the goods manufactured through a retail shop on the premises (*Finn* v. *Kerslake* (1931), 14 R. & I.T. 41; 2 D.R.A. 188)), storage (as a purpose and end in itself (*Kaye* v. *Burrows* (1931), 14 R. & I.T.; 39 2 D.R.A. 181, 183)), distributive wholesale business, a public supply undertaking and other non-factory purposes. The primary purpose may depend on what proportion of goods are manufactured on the premises or the areas, values of areas, persons employed and goods dealt with on the premises (1928 Act, ss. 3 and 4; 1929 Act, s. 68).

Agricultural hereditaments comprise agricultural land and agricultural buildings. Agricultural land is defined fairly

exhaustively—arable, meadow or pasture ground, plantations, woods, land for poultry farming (over one-quarter acre), cottage gardens (over one-quarter acre), market gardens, nursery grounds and allotments; *not* parks, other gardens, pleasure grounds, land mainly for sport or recreation and racecourses. Agricultural buildings are those occupied together with agricultural land (or being a market garden) and used solely in connection with agricultural operations thereon. There must be a nexus between these buildings and agricultural land.

Places of public religious worship are those of the Church of England and the Church in Wales, or which are certified for public religious worship, and church halls, chapel halls and similar buildings used in connection therewith. They may become rateable to the extent of any profitable letting (even by licence) for any other purpose (1955 Act, s. 7; see p. 849, *ante*).

Structures which may not be taken into account in arriving at gross value are those belonging to a Ministry or local authority or organisation and supplied for invalid chairs, etc., for the prevention of illness, etc., under the National Health Service Act, 1946, or for welfare arrangements (blind, etc.) under the National Assistance Act, 1946, and also privately-owned structures similarly used (1955 Act, s. 9 (1)).

Hereditaments of charitable and similar organisations include—those occupied for the purposes of organisations not established or conducted for profit, "whose main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare"; almshouses; playing fields (land used mainly or exclusively for open-air games or athletic sports) "occupied for the purposes of a club, society or other organisation . . . not established or conducted for profit" and making no charge for admission except on special occasions. Their assessments are not affected, but in 1956–57 their rates will be restricted to those paid in 1955–56 and in later years will be reduced in the same proportion. There is special provision for periods of part occupation, structural alterations, etc. The rating authority may also reduce or remit their rates. This arrangement is intended to be temporary pending review (the rating authority may give any organisation thirty-six months' notice to determine the rights of limitation of rates) (1955 Act, s. 8; see p. 849, *ante*).

Basis of Liability

Rates charged on a hereditament are based on its annual value, i.e., the rent at which it might reasonably be expected to let from year to year (1925 Act, ss. 22 (1) (*a*), (*b*), 68 (1); Valuation (Metropolis) Act, 1869, s. 4; Rating and Valuation (Apportionment) Act, 1869, s. 7 (1)). In the case of dwelling-houses and other non-industrial buildings (including appurtenances) a gross value is first arrived at, on the basis that the landlord undertakes the cost of repairs, insurance and other expenses necessary to maintain the hereditament in a state to command the rent. From that value a percentage deduction is made to cover those expenses and to yield net annual value, the deductions being according to a table (slightly different in London) to arrive at net annual value. Net annual value is therefore the annual rental value on the assumption that these expenses are borne by the tenant. In all other cases net annual value is ascertained direct, without the intervention of a gross value (the law has been materially amended in this aspect by the 1955 Act, s. 5 and Sched. II—the table of deductions—as from 1st April next, when it will become virtually uniform in London and the provinces).

For most properties this net annual value is the same as the rateable value on which the general rate is charged at a uniform amount in the £ (1925 Act, s. 2 (3)); London Government Act, 1899, s. 10). Where a partial exemption is granted to a class of property, however, a deduction is normally made from net annual value to give rateable value (there can even be two such deductions). The commonest example of such properties is that of industrial hereditaments, the rateable value of the industrial part of which is one-quarter of its net annual value, the rateable value of the remainder being the same as its net annual value where more than 10 per cent. is non-industrial (an apportionment of value is then necessary). Freight-transport hereditaments, a much less numerous class, are treated similarly (1928 Act, ss. 4 and 6; Local Government Act, 1929, s. 68).

Annual rental value does not mean necessarily, or even normally, the actual rent of a property. It means the rent which it is estimated the hereditament will command if let by a landlord to a tenant anxious to take it in the open market. It may be higher or lower than the actual rent for a variety of reasons, e.g., the special circumstances of the letting or the effect of the Rent Restrictions Acts, which are ignored in arriving at rental value (*Poplar Assessment Committee* v. *Roberts* [1922] 2 A.C. 93). It is arrived at on *evidence*, of which the usual forms are the opinion evidence of a rating surveyor or valuer versed in lettings, the rent of the hereditament itself, rents of comparable hereditaments and even rating assessments of comparable hereditaments, which of course reflect the opinions of the valuation officers who made them and are admissions against him (*Pointer* v. *Norwich Assessment Committee* [1922] 2 K.B. 47, 471; *Stockbridge Mill Co., Ltd.* v. *Central Land Board* (1954), 47 R. & I.T. 555; 25 D.R.A. 288). With some classes of property for which there are few or no rents or freely-negotiated rents, evidence may be afforded by the profit-earning capacity of the hereditament (licensed premises, theatres, racecourses, sports-grounds, etc.) or, if it is of a purely burdensome and not of a profit-earning nature, by a percentage on estimated cost of production, representing what the landlord might hope to obtain if it were let (local authority schools, sewage works, etc.).

The general rule is that the annual value has to be estimated at the date of the proceedings on which it is determined, which will be 1st April next for the new valuation lists themselves (i.e., when they come into force) or the date of any proposal for the alteration of the list made subsequently (*Barrett* v. *Gravesend Assessment Committee* (1941), 34 R. & I.T. 236; 12 D.R.A. 34). This rule will still apply to commercial and industrial properties, shops, offices, banks, warehouses, factories, licensed premises, picture houses, clubs, etc., and to public properties, water undertakings, town halls, schools, etc. They will be assessed at current annual values.

But a vital change has been effected in the case of dwelling-houses by the Valuation for Rating Act, 1953, replacing a different basis also dating back to 1939 in the Local Government Act, 1948, Pt. IV. The properties to which it applies are: any dwelling-house "a hereditament used wholly for the purposes of a private dwelling or private dwellings" (not one used for letting rooms singly); any private garage (a lock-up not exceeding 240 square feet in area); and private storage premises used wholly in connection with a dwelling-house (s. 3 (1) (2)). The gross values of these hereditaments are to be the rents at which they might reasonably have been expected to let on or about 30th June, 1939. It has to be assumed that the hereditament was subsisting then in its existing state, and that its existing locality was then in its existing state (other premises, their use, transport and other facilities and other amenities, but ignoring any increase

in the number of users except as affecting amenities). An approximate equality of supply and demand for the hereditaments must also be assumed (to avoid scarcity value and low value due to surplus). The Rent Restrictions Acts are also ignored (s. 2). The net effect is that dwelling-houses, private garages and private storage accommodation will be assessed by ordinary methods on 1939 values.

Probable Effects of the Revaluation

The last revaluation took place in the provinces in 1934 and in London in 1935, and assessments in the present valuation lists are based on levels of rental values prevailing then or some lower level, although there have been revisions of the assessments of certain classes of property since, e.g., to 1939 levels and even in one or two instances (e.g., shops and business premises at Sheffield, Solihull and Banbury) to post-war levels. In many areas owing to under-assessment due to various causes, assessments were considerably below true rental levels in 1934, and still more those in 1939 when values had generally appreciated. In addition, values since the war have doubled or even trebled over the country as a whole owing to the general inflation. And, moreover, there have been marked shifts in values, from one property to another, from one area to another and between classes of property as a normal result of economic development.

The revaluation has applied true rental values religiously and the new assessments for non-residential properties will faithfully reflect current rental values. There will therefore be large increases of assessments in nearly all cases, reflecting (i) the increase in values since 1939; (ii) the increase in values between 1934 and 1939; (iii) the making up of any under-assessment in 1934; and (iv) any comparative shift in value of individual hereditaments and areas since (but this may be a minus quantity). It is estimated that the cumulative effect of these factors will be increases of assessments of business, commercial and industrial premises of from 100 to 300 per cent. (more in cases of exceptional previous under-assessment, less in some instances, of earlier re-assessment, of licensed premises, etc.).

In the case of dwelling-houses, the same increases will occur except (i), because houses will be assessed on 1939 values. It has been estimated that house assessments will rise normally from 30 to 70 per cent., though the under-assessment factor has here been generally greater and increases of 100 per cent. may be not uncommon.

These increases do not mean that all ratepayers will pay more in rates. It is Government policy to maintain the total sum raised in rates in 1956–57 at not more than the 1954–55 level and this is being urged on rating authorities. To the extent to which this policy is successful there will be substantial reductions in rate poundages. The majority of occupiers of dwelling-houses are therefore likely to make a net gain, and practically all occupiers of business premises a very substantial loss. This shift of burden, coupled with the changes due to the rectification of under-assessment and individual shifts in value is likely to produce an explosive mixture. A later article will discuss the remedies available to ratepayers and appeal procedure.

F. A. A.

A Conveyancer's Diary

PURCHASER IN POSSESSION PENDING COMPLETION

The decision in *Wheeler* v. *Mercer* [1955] 3 W.L.R. 714 and p. 794, *ante*, is concerned with a point (and a very technical one, it seems to me) under the Landlord and Tenant Act, 1954. As such it is, I am happy to say, no business of mine. But in the course of his judgment in this case, Denning, L.J., made an observation which will be of general interest to conveyancers. Referring to a point which had been raised by counsel for the landlord in the case, the learned lord justice said: "He [counsel] took the case of a person who goes in under a treaty for purchase, and then the sale goes off. Such a person has been stated in the old books to be a tenant at will. Is he entitled to the benefit of the [1954] Act? I think not, for the simple reason that such a person is not a tenant at will at all: see *Errington* v. *Errington* [1952] 1 K.B. 290, 297 . . ."

This is a reference to one of the lord justice's own judgments. The facts in *Errington* v. *Errington* were peculiar. Shortly after the marriage of his son a father purchased a house for the married couple. The father provided one-third of the purchase price in cash and borrowed the remainder from a building society on a mortgage of the house. The house was conveyed into the name of the father. The father told his daughter-in-law that the £250 which he had paid in cash was a present to his son and herself, but he left them to pay the instalments of combined capital repayment and interest themselves. The father gave the building society book to his daughter-in-law, and told her that the property would be hers and her husband's when the mortgage had been repaid. The daughter-in-law paid the mortgage instalments regularly from that time onwards, but repayment had not been completed when the father died. The question then arose what (if any) was the interest of the daughter-in-law and her husband in the house as against the persons claiming through the father's estate. Three suggestions were made: (1) that the couple were tenants at will; (2) that they were tenants at a rent of 15s. a week (that being the amount of the weekly instalments payable under the mortgage); or (3) that the couple were licensees, (in the words of Denning, L.J.) having a permissive occupation short of a tenancy, but with a contractual right, or at any rate an equitable right, to remain so long as they paid the instalments, which would grow into a good equitable title to the house itself as soon as the mortgage was paid. The county court judge had held that the couple were tenants at will (with the result that the title of the father and consequently also that of his estate had become barred by lapse of time). The Court of Appeal's view was that the couple were licensees, entitled under a personal contract to occupy the house so long as the mortgage instalments were paid (what was to happen thereafter was discussed by the court but left undecided). This was the way that Denning, L.J., arrived at his conclusion in the passage from his judgment in *Errington* v. *Errington* to which he has referred in *Wheeler* v. *Mercer*. He first mentioned the classic definition of a licence propounded by Vaughan, C.J., in *Thomas* v. *Sorrell* (1673), Vaughan 351: "A dispensation or licence properly passeth no interest nor alters or transfers property in any thing, but only makes an action lawful, which without it had been unlawful." It had sometimes been supposed (he went on) that a crucial test in distinguishing between a licence and a tenancy is that in a tenancy an interest passes in the land, whereas in a licence it does not; but the test had given rise to misgivings because it might not correspond to realities. A good instance was *Howard* v. *Shaw* (1841), 8 M. & W. 118,

where a person was let into exclusive possession under a contract for purchase. "Alderson, B." (the learned lord justice went on) "said that he was a tenant at will; and Parke, B., with some difficulty, agreed with him, but Lord Abinger said that 'while the defendant occupied under a valid contract for the sale of the property to him, he could not be considered as a tenant.' Now, after the lapse of a hundred years, it has become clear that the view of Lord Abinger was right. The test of exclusive possession is by no means decisive. The first case to show this was *Booker* v. *Palmer* [1942] 2 All E.R. 674, where an owner gave some evacuees permission to stay in a cottage for the duration of the war, rent free. This court held that the evacuees were not tenants, but only licensees. Lord Greene, M.R., said: 'To suggest there is an intention there to create a relationship of landlord and tenant appears to me to be quite impossible. There is one golden rule which is of very general application, namely, that the law does not impute intention to enter into legal relationships where the circumstances and the conduct of the parties negative any intention of the kind.' Those emphatic words have had their effect. We have had many instances lately of occupiers in exclusive possession who have been held to be not tenants, but only licensees." There follow references to some half-dozen well-known cases to illustrate the point, among them *Southgate Borough Council* v. *Watson* [1944] K.B. 541 (occupier of requisitioned property), and *Foster* v. *Robinson* [1951] 1 K.B. 149 (on death of statutory tenant, daughter allowed to remain in possession for defined, limited period at a rent).

The present tendency of the courts is undoubtedly to look very carefully into arguments of which it is an essential part to show that a tenancy of some kind has arisen, so far as one of the parties thereto at any rate is concerned, *per incuriam*. But so far as regards the particular problems created by letting a purchaser into possession pending completion, it is to be noticed that the only direct reference to this position in this passage from the judgment of Denning, L.J., in *Errington* v. *Errington* is that in *Howard* v. *Shaw*, and this latter decision cannot carry a great deal of weight in this connection because it was immaterial to the decision (which was on the liability of a purchaser let into possession to pay a rent for use and occupation) whether the purchaser was a licensee or a tenant at will. Moreover, Lord Abinger was in a minority in his view that the purchaser was a licensee and not a tenant at will. The rest of this part of Denning, L.J.'s judgment in *Errington* v. *Errington* has nothing to do with the position of a purchaser. The conclusion must be that, however confidently expressed, the statement in *Wheeler* v. *Mercer* that a purchaser let into possession pending completion "is not a tenant at will at all" is based on *obiter dicta* (and is itself of course an *obiter dictum*). That is not to say that it is not right. In the present climate of judicial opinion it is highly probable that it is; but I think that the vendor who lets his purchaser into possession before completion should still be very careful about what he does and the way in which he does it, and must not expect to have any dispute into which he may land himself with his purchaser automatically resolved in his favour by the application of a universal rule that a purchaser, in these circumstances, is always a bare licensee.

The bogy with which one used to frighten vendors who wished to let the purchaser into possession but at the same time wanted the purchaser to pay for the privilege was *Francis Jackson Developments, Ltd.* v. *Stemp* [1943] 2 All E.R. 601 (C.A.). It has been said of that case that it was a very special case, and that it was not followed in the case (which came before a somewhat similarly constituted Court of Appeal very shortly after) of *Dunthorne & Shore* v. *Wiggins* [1943] 2 All E.R. 678. Certainly, in the latter case, Lord Greene, M.R. (who had delivered the leading judgment in the earlier case), said that the earlier case was of no assistance to the court in deciding the later; that must mean that the earlier decision disclosed no general principle. But it is still a decision of the Court of Appeal, and the consequences which may flow from the creation *per incuriam* of a tenancy at a rent between a vendor and a purchaser may be so disastrous nowadays, and the area of possible disaster is now so enlarged, that the wise vendor will always take every possible precaution to avoid putting himself in a position from which any tenancy between himself and his purchaser can be inferred.

The common-form printed conditions of sale all now provide for the possibility of a purchaser taking possession, and various stipulations are inserted in these conditions to cover the various points which may arise if the condition comes into operation. From the present point of view, however, two only of these stipulations have any importance. One is the requirement that the purchaser taking possession shall pay interest on the balance of his purchase money until the time of completion. The other is that in the event of rescission of the contract the purchaser shall give up possession. This latter condition, it seems to me, may impede the exercise by the vendor of a licensor's normal right of terminating the licence and obtaining possession of the property at will, a right which, if unimpeded, *inter alia* entitles a vendor to use the machinery known as a *Greenwood* v. *Turner* order ([1891] 2 Ch. 144) in order to obtain possession. It would, I think, be better to amend this condition to provide that the purchaser shall give up permission on demand, and for conformity's sake to make the condition requiring payment of interest referable expressly to the period of possession. If a purchaser is let into possession on terms corresponding with the common-form conditions amended in this way, the vendor should be pretty safe.

"A B C"

Landlord and Tenant Notebook

ESCAPE OF WATER

WHILE *A. Prosser & Son, Ltd.* v. *Levy and Others* [1955] 1 W.L.R. 1224; *ante*, p. 815, was essentially an action of tort between occupiers of adjoining premises, the facts and the distinctions drawn are of considerable interest to landlords who let parts of buildings, and to their tenants.

The first defendants owned a building. The plaintiffs were tenants and occupiers of a lock-up shop on the ground floor, their lease dating from before the acquisition by the first defendants of the reversion. The offices on the first, second and third floors were let, by the first defendants, to the second defendants, the lease giving them access via entrance doors, staircases and passages serving those floors. Later, the second defendants sub-let four out of five offices on the second floor to a firm who were not made parties to the action; under the tenancy agreement the second defendants undertook to keep the passages and staircases intended for the use of the occupants in complete repair, and the conveniences clean and fit.

In the passage serving the second floor there was a wash-basin. Employees of the second defendants would pass this

washbasin often, when going to or from the only room on that floor which those defendants had not sub-let, but they never used it. The passage was cleaned by a cleaner whom they employed.

There were sub-tenancies of the third floor and part of the first floor, but these do not appear to have affected the position, except in so far as they added to the mystery of what caused the trouble.

That trouble was the flooding of the ground floor by water which had, one night, escaped from a length of supply pipe beneath the washbasin on the second floor. That length of pipe was, it was agreed, redundant; it had probably been part of a pipe by which water had been brought to one of the offices. But it had a stopcock, and—at this stage the narrative becomes rather like a detective story—someone or something must have turned that tap on, not as far as it would go, but enough to permit the escape.

A considerable number of people used the building, and it was the custom for the person who left last, or who, after some shouted inquiries (which might not be audible throughout), believed that he was the last to go, to shut the outer door. As no one confessed to having turned and left the tap on, the identity of the culprit, if any, was never established; but what is important was that at first instance the learned judge came to the conclusion that the work was the deliberate and mischievous act of some person unknown, while the Court of Appeal, after perusing the evidence that the tap might have turned on accidentally, e.g., by a knock of a broom, preferred an open verdict on this point.

For at first instance the findings corresponded to those dealt with in *Rickards* v. *Lothian* [1913] A.C. 263 (P.C.), in which the flooding was due to the deliberate stopping up (by penholders, nails, string, soap, etc.) of the wastepipe to a basin on an upper floor plus the turning on, full, of the tap. The action was heard in Melbourne County Court, where the plaintiff was awarded damages by a jury; the Supreme Court of Victoria set the judgment aside, the High Court of Australia (by a majority decision) restored it. As regards the litigation and differences of judicial opinion, Lord Moulton said that the origin of the trouble was the county court judge's omission, after a careful summing-up in which he had told the jury that the defendant landlord would not be responsible for a deliberately mischievous act by some outsider not instigated by himself, to put a corresponding question to the jury. The fact that the defendant neither instigated it nor could have reasonably prevented it, plus the fact that the water was on the premises by way of ordinary user, entitled him to judgment.

If that were all, the view taken by the Court of Appeal on the circumstances in which the tap came to be turned on would have made no difference to the result. In *Peters* v. *Prince of Wales Theatre (Birmingham), Ltd.* [1943] K.B. 73 (C.A.) flooding was caused when frost occasioned the bursting of sprinklers (which were meant to react to fire only); the plaintiff had known they were there—there were some in his shop—when he took his lease, and the defendants were held not liable.

But in *Prosser & Son, Ltd.* v. *Levy* the court of first instance, having come to the conclusion that a deliberate and malicious act of some person unknown had caused the flooding, considered that that was sufficient to dispose of the claim—and this though it had also found that the leaving of the short length of redundant piping, equipped with a tap, was a negligent act or omission on the part of the first defendants.

The plaintiffs appealed against the judgment in favour of the first defendants only. The evidence given by experts justified the conclusion of negligence; the defendants' surveyor had agreed that the pipe plus tap were a "possible source of potential danger" after a plumber called by the plaintiff had expressed the view that nobody but a lunatic would have left things in that condition. And this, the Court of Appeal held in effect, meant that the rule in *Fletcher* v. *Rylands* (1866), L.R. 1 Exch. 265; (1868), L.R. 3 H.L. 330, governed the situation. For it is the rule, and not the exception, that "the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is *prima facie* answerable for all the damage which is the natural consequence of its escape." It is an exception to the rule that consent to the source of danger by the plaintiff, combined with absence of negligence on the part of the defendant, will excuse the latter. "One who takes a floor in a house must be held to take the premises as they are, and cannot complain that the house was not constructed differently"—Martin, B., in *Carstairs* v. *Taylor* (1871), L.R. 6 Exch. 217—indicates the nature of the exception, i.e., that its basis is consent; the plaintiff in that case failed. In *Peters* v. *Prince of Wales Theatre (Birmingham), Ltd., supra*, Goddard, L.J., contrasted his failure with the success obtained by the plaintiff in *Humphries* v. *Cousins* (1877), 2 C.P.D. 239, in which the parties were occupiers of adjoining houses.

According to Goddard, L.J., it is the element of consent that prevents the *Fletcher* v. *Rylands* rule from applying; this, I may say, was not too clearly brought out by the judgment in *Humphries* v. *Cousins*, Denman, J., being content to emphasise the fact that in *Carstairs* v. *Taylor* the parties occupied different storeys in the same building; but the consideration of consent may have underlain the reasoning. But, when Goddard, L.J., says: "The contractual relationship between landlord and tenant, or the willingness of the plaintiff to take a lease of part of a house so constructed that at the time when he takes his lease other occupiers are being supplied with water, removes the case from the sphere of the common-law doctrine laid down in *Rylands* v. *Fletcher*", it seems that too much importance must not be attached to the mere existence of a contractual relationship.

For it was immediately after citing that judgment that Singleton, L.J., delivering judgment in *A. Prosser & Son, Ltd.* v. *Levy* held that, negligence and consent being the vital considerations, the defendants were liable because the plaintiffs could not be said to have consented to the set-up or installation at the time the damage was caused—not, be it noted, at the time when the plaintiffs took the lease (of the defendants' predecessor in title). To this extent, the decision appears to break new ground. However, they were under a duty to the plaintiffs which they had broken; and their inability to prove deliberate malicious conduct on the part of some third party as the cause of the damage left them liable, there being no *novus actus interveniens*.

R. B.

Mr. F. Lavender, solicitor, of Bishop's Castle, has been presented with an armchair and an illuminated address as a token of his services during thirty-three years as Town Clerk of Bishop's Castle.

We regret that the second part of the article on Tribunals and Administrative Procedures (*ante*, p. 841) is unavoidably held over owing to pressure of space. It is hoped to include it in next week's issue.

HERE AND THERE

DYING ART?

RECENTLY, in delivering the Lloyd Roberts lecture at the Royal Society of Medicine in London, Lord Radcliffe had some very interesting reflections to make on the lawyer's art. Lawyers, he said, instinctively resort to deductive reasoning to demonstrate their conclusions and yet law is not an exact science. Their art consists in applying to a particular combination of circumstances in the complex relations of human beings certain generalisations styled principles. Their background, he suggested, should favour "an almost desperate humanism," and in this he saw the best justification for what he qualified as "the lawyer's perhaps dying art." Is it, then, for us at last that the bell tolls and the tumbril is waiting, or (in more clearly contemporary technique) the gas chamber? As Lord Radcliffe viewed the situation, the lawyer's status is still high, but that eminence he owes in part to the great value that was placed on his calling in the earlier forms of society; he enjoys an inherited prestige which is out of all proportion to the current evaluation of the services that the law can render. Reading that sentence, one sees in imagination the contemporary lawyer living like the last of a long line of squires in some old manor house, rambling and unplanned. Impoverished though he is by taxes and death duties, and living on his capital, his inherited and mortgaged estate still commands a certain instinctive, if unreasoning, show of respect among the council house tenants, who call him "sir," although in their current evaluation of priorities the officials of the local authority count for a good deal more than he where the arrangement of their lives is concerned. The reflected glory of the former times is seen in the increasing number of men and women of all ages who come to the Bar every year, or try to come, though most of them go straight away and do something else, or go on with what they were doing before in a warmer glow of, as it were, indirect lighting from another age. Lord Radcliffe's diagnosis of the situation is that to-day the vast possibilities of material change have made men haughty to their institutions; their institutions must serve them absolutely and they will not in any way serve their institutions, whereas a lawyer remains first and last an institutionalist. Yes, one can see quite clearly what the haughty contemporary man is after: he not only wants service without responsibilities (that's not specifically contemporary), but he actually thinks he can get it. He wants to turn his human relationships off and on and up and down, like gas or water or electricity in the pipes; someone else, anonymous and unobtrusive (until he gets in a rage and goes on strike), will do the maintenance. There is no longer the sense of the magic of the flint and the spark and the crackling fire-log and the tinkling spring. They, like the rooted institutions which the contemporary man treats so haughtily, must be served. And so, for the matter of that, must the new machine with its vast possibilities of material change, but that fact and its inconvenient implications are not yet in general circulation. When they are, the lawyer may well be called to the rescue.

JUSTICE UP TO DATE

BUT, in the meantime, how desperate must the humanism of the lawyer be in order to ensure his survival? One knows that to read the law reports year by year, from the Year Book onwards, is to look upon the ever-changing face of social history. How far must the lawyer adapt himself to the unpropitious climate which is now enveloping him? Must he, for the time being, assume a protective colouring, grow a new skin? A new generation arises which will not serve the institution of the law but demands that it should serve them. Very well, what is the service that it requires? Since so soon the television set will finally have replaced the domestic altar of the old household gods, no doubt the answer will be entertainment with "audience participation." Already the B.B.C. are offering made-up trials culminating in an invitation to the invisible audience to act as jury and send in their votes for the verdict on postcards. Already the United States, always one step ahead of the march of time, have televised a murder trial at Waco, in Texas, with the camera operating from the gallery. Doubtless it is not beyond the range of human versatility to conduct a life or death investigation and simultaneously to give a consciously satisfactory dramatic performance to an audience which is probably larger than the aggregate of all the theatregoers who ever saw Henry Irving, but it must put something of a schizophrenic strain on the lawyers concerned, or so one would have thought. Yet Judge Drummond Bartlett, as reported by a young lady from Fleet Street who interviewed him over the transatlantic telephone, had no doubts: "Guess ah'm a bit of a celebrity now since ah've been discovered by the cameras, but ah think it's a m-i-g-h-t-y fine idea to televise trials. There are 100,000 people in Waco and 390,000 served by our television station. You can bet they'll all have their eyes glued to the screen to-day." Did the participants make-up for the performance? His Honour laughed heartily: "We don't need no make-up in Waco, ma'am. *We* get the sun. *We're* bronzed. Come out and see us some time." Obviously the thing's an enormous success in Texas. But a dissentient voice sounded from Georgia, where Chief Justice W. H. Duckworth said that "a murder trial is no bull fight" and that to televise it is going "hog wild" and making a stage show of justice. In conservative England, Lord Goddard, C.J., emphatically concurs. His warning shot—fired across the bows of Portland Place over that televised picture of Mrs. Comer leaving the Old Bailey—suggests that television will have to go on inventing its own trials for a few years more.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Value of a Practice

Sir,—In your issue of the 19th November you endorsed the view that two to three years' purchase is as good a guide as any to the price which should be paid for goodwill in a well-established practice. I would respectfully suggest that, however well-established the practice, everything depends upon the size of the share in it which is being sold.

For instance, a share which yields only £500 a year carries no goodwill whatever, but rather the reverse. In fact, for an experienced practitioner it would, perhaps, be fair to say that there is no goodwill in an assured but unpensionable income of £1,000 a year (some may put it higher), and it would be absurd for him to pay, in addition to the price of furniture, accommodation and working capital, a further £2,000 to £3,000 for the privilege of obtaining such remuneration for his full-time labour.

If then, for the sake of argument, £1,000 a year is taken as the value of the average experienced solicitor, a share yielding £1,500 a year has £500 as its goodwill element, while a £3,000 a year share has £2,000 of goodwill. Surely if £7,500 (2½ years' purchase) is a fair price for the goodwill of the latter, representing three and a quarter times the goodwill element, it

cannot be said that £3,750, representing seven and a half times the goodwill element, is a fair price for the share yielding £1,500 a year?

Moreover, in the £1,500 a year case a fall of one-third in net profits would see the goodwill element disappear altogether, while a similar fall in the larger share would still leave an income of £1,000 attributable to goodwill.

On this basis, if as much as three years' purchase is a fair price for a £3,000 a year share (which may well be so), even six months' purchase is far from cheap for a share with an indicated yield of £1,250. Yet there are still, I believe, many practitioners who would expect a price of at least £2,000 for such a shadowy element of goodwill.

Swansea. J. G. P. O. JOHNS.

TALKING "SHOP"

December, 1955.

THURSDAY, 1ST

Another instance of the misuse of undertakings on completion. When *X*, *Y* and *Z*, borrowers from the *M* bank, repaid their mortgage loan, it was stated in the statutory receipt that payment had been made "by the within-named *X* and *Y*," with no mention of *Z*. Messrs. *A & Co.* quite properly object to the title on the ground that the statutory receipt operated as a transfer of the mortgage under s. 115, Law of Property Act, 1925. (In parenthesis, it is not without interest that some twenty purchasers have previously accepted the title, in reliance, presumably, upon the exception to this rule that will be found in s. 115 (2) (*b*), though it does not happen to be appropriate. So much for those who say that titles need not be investigated *de novo*.)

The validity of the objection is of less interest to the student of modern conveyancing practice than the solution which suggests itself to *A & Co.* They would like the vendor's solicitors to give them an undertaking to "deal with" any objections that may be raised in the latter end by the Chief Land Registrar. In brief, though they do not say so, it would be highly convenient and reassuring if the vendor's solicitors would guarantee their client's title, and if it is not too much trouble, that of their client's mortgagees as well. Yes—it *had* occurred to them that *Z* could have been joined in the conveyance, but then the conveyance was drafted before the requisitions and now it has been engrossed, and so has the mortgage . . . etc. But a solution is at hand. *Z* will give the undertaking, and it will be confined to the alleged defect.

FRIDAY, 2ND

Deferential inclination of Elephant's Ears towards Mr. T. Charles Bryant (p. 775 *ante*), who may like to know that the formula he long since wisely discarded still produces the same result. Firm to client: ". . . please sign your will in the presence of two witnesses where your initials have been written in pencil." And so she did—in pencil. But we give her nine out of ten for reading badly punctuated advice. To the lady who recently returned a codicil duly dated and fully attested, but unsigned, we can award no more than a *beta minus*. Undiscovered, as yet, is a fool-proof formula for signing wills. Too many resemble those—

> *Bloody instructions which being sent return*
> *To plague th'inventor.*

By the way, what is your practice when the client fails to insert the date of signing a will or codicil? Do you fill in the date on the principle that the end justifies the means? Or do you re-engross for signature and repeat the directions? Or do you, perhaps, favour one of those parlour games with a dry pen?

TUESDAY, 6TH

Other extracts from current correspondence:—

(1) Client to self: ". . . a most lovely and romantic spot with a pigsty and two good fields . . . I would dearly like to invest in a pig."

(2) From another, pained by her interview with an income tax consultant: ". . . the mind of a ghoulish housemaid."

(3) Self to client: "I would not go the length of saying that solicitors are responsible for the mental condition of their clients and we should sometimes be in a hard case if we were, but none the less when a solicitor submits a codicil to his client for signature . . ."

(4) From the franking of an envelope: "Love is a many splendored thing" (see, if desired, film of that title)—a promising slogan for the litigation department, and to be recommended for "letter before action."

(5) From an insurance company: "As the certificate of birth gives no names of the person to whom it refers, and the date of birth does not agree with the age at death stated in the certificate of death, we shall be obliged if you will confirm that the certificate of birth refers to Captain *X* and not to his brother who . . . died at the age of five."

(Note: it did.)

WEDNESDAY, 7TH

The problem of the deserted wife in the matrimonial home continues to wind its way through the labyrinth of our legal system. Every now and again it bumps against some established principle and sheers off again, rather after the manner of a dodgem car at a fun-fair. I think we by-passed "status of irremovability" and Rent Acts analogies some time ago; later there was that nice question of registering her as a land charge; more recently still it has looked as though the whole business was getting into a sad rut of principle, with old-fashioned talk of equities and equitable interests and purchasers for value without notice. I am not at all sure what the state of the game is now—whether the wife has gone up the ladder or down the snake—but at least we have it on judicial authority that there is a limit to the implications of constructive notice. If you are a bank manager—heavily disguised, shall we say, as a prospective equitable mortgagee, though your solicitor alone knows that, or perhaps would, if you were to consult him—it is not incumbent on you to inquire of your customers whether they have deserted their wives or have a mind to do so. We were beginning to wonder about that—yes, seriously—and are thankful that legal theory has once again been subordinated to common sense.

All this started as a social problem, sired, as it were, by matrimonial error out of housing shortage; but social problems have a way of developing into legal problems—hence the absorbing interest of legal problems, to which perspicacious lawyers have ever applied that critical social test of the common weal, or, as it is sometimes expressed, the greatest good of the greatest number. (Not always right-headedly; it must have been just on that principle that Judge Jeffreys conducted the Bloody Assize.) The process of growth—social into legal problem—is as natural and inevitable as the wage-price spiral or too much money chasing too few goods or the need to get your hair cut. But the novelty of the

problem of the licensee-wife (for want of a better term) has served to invest it with a legal interest quite out of proportion to its relatively small social significance. I fancy that it is not the most pressing problem of the day, or even one of them ; it is a temporary nuisance which more houses or fewer wayward husbands would soon abate. We have not yet seen the end of it in the law reports, but once the legal principles are settled, its decline into the dark places of the textbooks should be rapid and unlamented.

THURSDAY, 8TH

Since we are told by the statisticians that ours is an ageing population—it is the sort of thing they say, and one may grasp the point, whilst resting baffled by the concept of a population that does not age—it is of interest to speculate how the problem of old folk, already in its " social " stage, will develop legally. It may be that they (though by then it may be " we ") will acquire new rights and a protection at present unknown to English law. If deserted wives may cause such a clatter, why not the " oldsters " ? There is a promising precedent in " The Alien Years," by Sarah Mabel Collins (Hodder & Stoughton) :—

> Fr. Kern [who] occupied the first storey . . . had certain rights over the farm which must be taken into account by the purchaser. These rights were that she must be provided with living accommodation, fuel, butter, milk, eggs, flour, meat and clothing in stated quantities, and a given amount of pocket money each week. She was a so-called Austraglerin, and in the event of the farm being sold, the value of her rights was estimated and deducted from the sale price, so that she remained a permanency so long as she lived, irrespective of whoever bought the place. By this scheme an aged farmer and his wife were never in want ; they had an annuity which must be delivered in kind, and which prevented their declining years being dimmed by want.

We should have to find a more homely term than " Austraglerin " to describe this status of irremovability and of insulation in decline from the declining pound. Perhaps a revival of " relict " ? But I doubt if that is admissible in the masculine form. " Relict," it seems, is but a relict of " derelict." My authority for this proposition is the issue of *Country Life* for 7th July last, at p. 29, where there is reproduced the following text from a wall monument :—

Here lies the dust of
Mrs. Packington who was a
Wife and Widowe Rare
Exemplar in each life,
A Derelict of six and twenty years . . .
Will somebody try " Derelict " on the Probate Registry ?

FRIDAY, 9TH

Privileges for the old are no novelty in Ireland and anyone who is interested in the subject should read Serjeant Sullivan's amusing account of the development and abuse of the system there. " They were to have a room in the house and their ' diet.' This was invariable and fundamental. Filial affection might have been expected to add more, but it did not do so, and the provisions of the marriage deed had a tendency towards elaboration . . . Firing had to be bargained for, sometimes a ration of paraffin oil for a lamp. The exact amount of furniture, clothing and utensils to be kept by the parents would be a matter of exact definition . . . A cautious conveyancer would see that there was access to the pump." The author says that " the grass of a cow, wet and dry, and her calf, a goose and her clutch, together with the use of a donkey and butt to go to Mass on Sundays . . ." was a common form, indicative of a fairly prosperous holding. And " the deed was read and memorised and was conned and considered day and night, with a view to its evasion." Sixpence damages for supplying " second dhraw " of tea, heavily dosed with soda to give a deep colour, and declaration that " bread " implied " butter " would " gladden the ancient hearts." But sometimes they would suffer a reverse. " A process for maliciously providing an inordinately obstinate donkey incapable of reaching the church in time for Mass would be dismissed on the merits."

The origin of these privileges is but another example of the relationship between social and legal problems. Improvident early marriages led to subdivision of holdings ; hence, starvation ; hence the prohibition by law of subdivision ; hence later marriages and pressure upon the old folk to abdicate " *cum privilegio* " ; hence still later marriages, for many of the old folk would not abdicate, or would do so only upon terms that reduced the juniors to a condition of subservience. And now, what ? The problem of late marriage in Eire is (so they tell me) as big a problem as the old problem of early marriage ever was.

WEEK-END REFLECTION

I cordially agree with " Suburban Solicitor's " comments—(p. 775, *ante*) on dilatory solicitors, Which of several grievances about our profession—real or imagined—stands at the top of the list? Malversation? Over-charging? Chicanery? Pontification, austerity and remoteness ? None of these. In the vast majority of cases it comes to this—" he won't reply " or " we don't know what he's doing " or " it drags on and on." Neither time nor reputation can be made good from the compensation fund. The dilatory do us more damage than the dishonest.

" ESCROW "

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

COURT OF APPEAL

HUSBAND AND WIFE: CONSTRUCTIVE DESERTION: TERMINATED BY AGREEMENT

Harvey *v.* Harvey

Denning, Hodson and Morris, L.JJ. 17th November, 1955

Appeal from Divisional Court.

A wife left the matrimonial home in November, 1954, because her husband would not agree to turn out of the home a married son whose behaviour had become intolerable to his mother. She issued a summons against her husband for maintenance on the ground of his desertion of her ; but at the hearing she agreed to return home on an undertaking that the son would leave. The son left and the wife returned in February, but left four days later, and restored her original summons, alleging that her husband had been continuously in desertion since the previous November. The justices found the desertion proved and made an order for maintenance. The husband appealed to the Divisional Court, which allowed his appeal and quashed the order, but sent back for rehearing the question as to whether the desertion had continued after the wife's return in February. The wife appealed.

HODSON, L.J., said that the effect of the justices' finding was that the husband had deserted his wife in November and that that desertion had continued without any break up to the date of the hearing of her summons, notwithstanding the events that had

happened. In his lordship's view, the desertion, which was constructive desertion, was terminated when the basis had been removed by agreement. The husband had first refused to get rid of his son, and the wife had said: "I will not live with you unless you do"; and when he got rid of the son the position was that by agreement that desertion was terminated. He would dismiss the appeal; and the justices should look at the matter afresh to see whether a new period of desertion started when the wife left for the second time.

DENNING, L.J., agreeing, said that it was true that there was no resumption of cohabitation in the present case; but a resumption of cohabitation was not the only way of terminating a desertion. It could also be terminated by an agreement or arrangement between the parties.

MORRIS, L.J., delivered a concurring judgment. Appeal dismissed.

APPEARANCES: *F. Elwyn Jones*, Q.C., and *John K. Wood* (*Rhys Roberts & Co.*, for *Leo Abse & Cohen*, Cardiff); *J. T. Molony*, Q.C., and *A. S. Myerson* (*Wrentmore & Son*, for *Morgan Lloyd & Evans*, Cardiff).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[3 W.L.R. 946**

REMOTENESS OF DAMAGE: NEGLIGENCE: ACTIVE DIRECTOR OF PRIVATE COMPANY INJURED: LOSS OF PROFITS: PLAINTIFF'S RECEIPTS REDUCED

Lee *v.* Sheard

Denning, Hodson and Morris, L.JJ. 23rd November, 1955

Appeal from Hilbery, J.

The plaintiff, while driving his car, received injuries in a collision with another car, of which the driver was killed. The plaintiff was one of the two directors of a private company, and held nearly half the share capital. The company carried on the business of textile merchants, and the plaintiff acted as buyer and seller. Owing to the plaintiff's absence on account of his injuries there was a substantial diminution of the turnover and profits of the company, so that there was a heavy reduction of the proceeds of the business available for the plaintiff and his co-director. In an action for negligence against the personal representative of the deceased driver, the plaintiff claimed, as one of the heads of damage, damages in respect of the diminution of the distributions received by him from the company. Hilbery, J., found that the deceased had been wholly to blame, and awarded the plaintiff £1,500 in respect of this particular claim. The defendant appealed.

DENNING, L.J., said that the question for determination was whether the item of £1,500 was recoverable in point of law from the defendant. On behalf of the plaintiff, it was said that this was damage which flowed directly from the tortious act of the deceased. On the other hand, the defendant argued that that item was too remote in law to be recovered; that the party who suffered the loss was the company, and that the plaintiff was really seeking to recover part of the company's loss, and that if a man chose to turn himself into a limited company for the sake of limiting his liabilities, he had to put up with the consequences, one of which was that he could not recover for the company's loss. Of the two arguments, that of the plaintiff succeeded. The loss which he suffered was a real loss of £1,500. He was entitled to recover that sum from the wrongdoer unless it was too remote, or there was some other good reason why he should not get it. In some circumstances a company itself could recover for damage suffered by the company as a result of the loss of services of its servant. If the plaintiff had been a servant, the company might have recovered damages in an action *per quod servitium amisit*, and then, of course, the plaintiff could not also recover. But that was a cause of action which was now in disfavour and must be limited to cases of master and servant and not extended to any new cases: see *A.-G. for New South Wales* v. *Perpetual Trustee Co., Ltd.* [1955] A.C. 457. The plaintiff was not a servant, and the company were not entitled to recover their loss. In those circumstances the plaintiff was entitled to recover his real loss. So, too, a partner in a partnership would be entitled to recover his own real loss and no more. The appeal should be dismissed.

HODSON and MORRIS, L.JJ., agreed. Appeal dismissed. Leave to appeal refused.

APPEARANCES: *P. O'Connor* (*White & Co.*); *G. Gardiner*, Q.C., and *D. Lowe* (*Lees, Smith & Crabb*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 951**

SALE OF GOODS: TEMPORARY PROHIBITION OF EXPORT OF COMMODITY: WHETHER SELLERS EXONERATED BY FORCE MAJEURE CLAUSE

J. H. Vantol, Ltd. *v.* Fairclough Dodd & Jones, Ltd.

Singleton, Jenkins and Parker, L.JJ. 24th November, 1955

Appeal from McNair, J. ([1955] 1 W.L.R. 642; *ante*, p. 386).

A written contract in a standard form of the London Oil and Tallow Trade Association dated 27th November, 1950, for the sale of 100 tons Egyptian washed cottonseed oil to be shipped during the months of December, 1950–January, 1951, from Alexandria, at a price of £146 10s. per ton c.i.f. Rotterdam, contained the following clause: "Should the shipment be delayed by . . . prohibition of export . . . the time of shipment shall be extended by two months. Should the delay exceed two months, buyers shall have the option of cancelling the contract forthwith or accepting the goods for shipment as soon as possible . . . The option to be declared as soon as shippers announce their inability to ship . . ." The sellers had previously purchased 200 tons of that commodity from sellers in Egypt who held a valid but withdrawable export licence from the Egyptian Government. On 12th December, 1950, the export of all cottonseed oil was prohibited by the Egyptian Government. On 3rd January, 1951, the licence granted to the original sellers was renewed. On 17th February the export of cottonseed oil was again prohibited and the prohibition continued until the end of April. On 22nd February the sellers notified the buyers of this; the buyers contended that the sellers were in default and they claimed damages. McNair, J., gave judgment for the sellers. The buyers appealed.

SINGLETON, L.J., said that the sellers' contention was that there was delay in shipping the goods by reason of prohibition of export, and, but for the delay so caused, the goods would have been shipped in December; that, in view of that delay, the time of shipment was extended for two months to the end of March, 1951; and that before that extended time had run, the buyers repudiated. Once delay in shipment arose through one of the causes mentioned, the sellers had to make new arrangements, and, to avoid any question as to length of time during which the delay operated, the clause provided a fresh two months' extension. The buyers' submission was that the clause did not apply unless the shipment was delayed through one of the causes mentioned until the end—for all practical purposes—of the agreed time for shipment; no doubt the temporary prohibition of export was a bar to shipment during that time and perhaps a little longer, but there was nothing to show that shipment was delayed right up to the end of January. The question was not easy, but seemed to be concluded by the use of the words "the shipment" instead of "shipment." "The shipment" was the one contemplated by the parties to be effected in December/January, so that unless it was shown that the agreed shipment was delayed beyond January by one of the causes mentioned, the clause did not apply; and there was no such finding. The clause had never come into operation, and the buyers were entitled to judgment.

JENKINS and PARKER, L.JJ., agreed. Appeal allowed. Leave to appeal.

APPEARANCES: *A. A. Mocatta*, Q.C., and *J. Donaldson* (*Stephenson, Harwood & Tatham*); *T. G. Roche*, Q.C., and *A. J. Bateson* (*Thomas Cooper & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1302**

CHANCERY DIVISION

INCOME TAX: AGREED DAMAGES FOR WRONGFUL TERMINATION OF AGENCY: WHETHER TAXABLE

Wiseburgh *v.* Domville (Inspector of Taxes)

Harman, J. 26th October, 1955

Appeal from the General Commissioners for Manchester.

A manufacturers' agent entered into an agreement with a company to act as their agent for a certain period. The company dismissed him without giving him due notice and he brought an action against them, claiming damages for breach of contract, an account of the commission due, and payment thereof. The action was settled on terms agreed between the parties which were embodied in an order under which the agent was to receive £4,000 as damages for breach of the agreement and costs, and it was ordered that he should recover nothing in respect of the

claim made by him for commission and expenses. The general commissioners decided that the sum of £4,000 was taxable profits for the year in which it was actually received. The taxpayer appealed.

HARMAN, J., said that, accepting that the defendants paid purely for the wrongful premature ending of the agreement, the damages represented the profit which the taxpayer would or might have made out of the agreement between the breach and the due ending date. If it was merely a *quid pro quo* for loss of trading profit, which would have been taxable, there was no reason why it should not bear tax in the same way. The sum represented income. If the taxpayer had carried on no other agency, it might possibly have been said that what he had lost would have been a capital asset. In *Van den Berghs, Ltd.* v. *Clark* [1935] A.C. 431, a company discontinued one side of its business in consideration of a large sum of money; there the whole structure of the company and the character of its business were radically altered. But in the present case the taxpayer had other agencies from time to time, and one of the ordinary incidents of such a business was that one agency might be stopped and another begun. The commissioners had been right in finding that the payment was a mere compensation for the loss of profits. Appeal dismissed.

APPEARANCES: *N. E. Mustoe*, Q.C., and *G. B. Graham* (*Garland-Wells, Riches & Co.*); *Sir L. Ungoed-Thomas*, Q.C., and *Sir R. Hills* (*Solicitor of Inland Revenue*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1287**

CHARITY: GIFT TO PROVIDE FLATS FOR OLD PERSONS AT ECONOMIC RENTS

In re Cottam; Midland Bank Executor and Trustee Co., Ltd. *v.* Huddersfield Corporation

Danckwerts, J. 22nd November, 1955

Adjourned summons.

A testator directed his trustees to transfer a trust fund to a corporation who should apply it for the provision of a flat or flats to be occupied by persons living within the boundaries of the county borough and "being in every case over the age of sixty-five years." He further directed that the flats should be let at economic rents and that the corporation should formulate such rules and regulations as it should think fit along the lines of rules and regulations in existence relating to certain homes for old people in the neighbourhood. A summons was taken out to acertain whether this constituted a valid charitable trust.

DANCKWERTS, J., said that the class selected by the testator consisted of aged persons, so that *prima facie* the gift was charitable. Against that it was said that as the flats were to be let at an economic rent, there was no bounty in the gift so that it was not charitable. But the fact that the beneficiaries might have to pay or repay something did not render a gift non-charitable: *In re Monk* [1927] 2 Ch. 197. It had been suggested that the testator did not intend that a full commercial rent should be paid, and there was also the consideration that rules should be made on the lines of those of local homes for the aged; those rules provided for free accommodation for persons whose incomes were under certain prescribed limits. It was plain that the testator had in mind persons of small means, and that it was his intention that homes of a cheap character should be provided, so that the economic rent was such as might properly be paid by persons within the class for which the other homes provided, perhaps, more adequately, as no rents at all were required. The gift in question was charitable and valid. Declaration accordingly.

APPEARANCES: *B. G. Burnett-Hall* (*Biddle, Thorne, Welsford and Barnes*, for *Cartwright & Fieldhouse*, Huddersfield); *E. J. T. Bagshawe* (*Sharpe, Pritchard & Co.*, for *Harry Bann*, Town Clerk, Huddersfield); *K. Backhouse* (*Francis Miller & Steele*, for *John Nightingale & Co.*, Manchester); *B. J. H. Clauson* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1299**

COMPANY: WINDING UP: CREDITORS PAID IN FULL: WHETHER ENTITLED TO INTEREST

***In re* Fine Industrial Commodities, Ltd.**

Vaisey, J. 23rd November, 1955

Adjourned summons.

A petition was presented and an order made for the compulsory winding up of a company on the ground of insolvency. In the course of the winding up the liquidator successfully prosecuted an action to set aside a debenture. In the result the liquidator had in hand a substantial surplus after paying the company's creditors 20s. in the £. A summons was taken out to decide the question whether interest was payable out of the surplus assets of the company on the amounts admitted to proof in respect of (*a*) a judgment creditor; (*b*) simple contract creditors.

VAISEY, J., said that the judgment creditor was entitled to interest under his judgment. The debts of the ordinary creditors did not carry interest as such, and the question was whether there was anything in the relevant statutes or in the general jurisdiction of the court which enabled the court to award interest. The creditors had contended that they could be awarded interest under s. 3 (1) of the Law Reform (Miscellaneous Provisions) Act, 1934, which provided that "in any proceedings . . . for the recovery of any debt" the court might include interest in the judgment; but that section did not apply as a winding up was not such a proceeding. They then contended that they were entitled to interest by virtue of the combined effect of s. 317 of the Companies Act, 1948, which provided that in the winding up of an insolvent company the rules of bankruptcy should prevail with regard to the rights of creditors, and of s. 33 (8) of the Bankruptcy Act, 1914, which provided that any surplus after the payment of debts should be applied to the payment of interest on the debts proved. The question was technical and open to doubt. Although for some purposes during the winding up the company must be deemed to have been insolvent, it seemed that when the time came for dealing with the surplus it must be treated as a company which was and always had been solvent, so that the ordinary creditors could only prove for their debts without interest. Such a view seemed to have been expressed by Giffard, L.J., in *In re Humber Ironworks and Shipbuilding Co.* (1869), L.R. 4 Ch. 643. In the present case the creditors had stood by and allowed an action to be brought for the benefit of the contributories, and the court would be much inclined to allow them interest if there was any discretion in the matter; but there was not to be found any case or section of the Act which enabled the court to hold, as a matter of equity and justice, that the ordinary creditors should be put into the position of judgment creditors. They must accordingly be treated as creditors of a solvent company, and interest could not be allowed. Declaration accordingly.

APPEARANCES: *C. A. Settle*; *P. Sykes*; *A. Heyman*; *R. Hunt* (*Herbert Oppenheimer, Nathan & Vandyk*; *E. F. Turner and Sons*; *W. R. J. Hickman & Randall*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 940**

QUEEN'S BENCH DIVISION

INSURANCE: ALL RISKS MARINE POLICY: EXCEPTION AGAINST "INHERENT VICE": GOODS IN BURST BAGS

F. W. Berk & Co., Ltd. *v.* Style

Sellers, J. 2nd November, 1955

Action.

The plaintiffs incurred considerable expense in and about the rebagging and landing of a cargo of kieselguhr which had been shipped from North Africa to London. The cargo, which arrived in a damaged condition due to the bursting of the bags in which it was carried, was covered in transit by two policies of marine insurance against "all risks of loss and/or damage from whatsoever cause arising." Clause 36 of the Institute Cargo Clauses (Wartime Extension), which was attached to and formed part of the policies of insurance, provided: "This insurance shall in no case be deemed to extend to cover loss damage or expense proximately caused by delay or inherent vice or nature of the subject matter insured," and s. 55 (2) (*c*) of the Marine Insurance Act, 1906, provides: "Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject matter insured." The underwriters denied liability on the ground that the damage to the cargo was caused by inherent vice of the kieselguhr and its packaging. Sellers, J., found as a fact inherent vice in the goods insured.

SELLERS, J., said that *British and Foreign Marine Insurance Co.* v. *Gaunt* [1921] 2 A.C. 41 showed that under an all-risks policy there must be some accident or casualty to cause liability. The plaintiffs contended that the parties could by express words contract out of s. 55 (2) (*c*) and create a liability in respect of ordinarily excepted risks, and had referred to authorities

supporting that contention. But in the present case the exceptions clause was in emphatic terms; it restricted the scope of the all-risks clause without being repugnant to it. If the plaintiffs had wished to insure against inherent vice they should have used specific words, or had it struck out of the exceptions. There was no accident or casualty as required by *Gaunt's* case (*supra*); with bags in such condition nothing was more certain than that they would lose their contents and have to be replaced. Such an expense did not fall within the policy, and the claim failed.

Judgment for the defendant.

APPEARANCES: *Eustace Roskill*, Q.C., and *C. Bailhache* (*Ince & Co.*); *M. Kerr* (*William A. Crump & Son*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 935

INN: DESTRUCTION BY FIRE OF GUEST'S CAR IN INN GARAGE

Williams *v.* Owen

Finnemore, J. 10th November, 1955

Action heard at Exeter Assizes.

The Fires Prevention (Metropolis) Act, 1774, provides by s. 86: "... no action, suit or process whatever shall be had, maintained or prosecuted against any person in whose house, chamber, stable, barn or other building, or on whose estate any fire shall ... accidentally begin, nor shall any recompense be made by such person for any damage suffered thereby; any law, usage or custom to the contrary notwithstanding: ... provided that no contract or agreement made between landlord and tenant shall be hereby defeated or made void." The garage of the defendant's inn contained a stove for heating water for the rooms above; it was surrounded by a concrete wall, and no petrol was stored in the garage. One night, in circumstances unknown, a fire broke out in the garage, which destroyed the car of the plaintiff, a guest at the inn.

FINNEMORE, J., said that the plaintiff contended first that the liability attaching to innkeepers covered the case, and that the defendant was responsible on the basis of absolute liability irrespective of negligence; secondly, that the fire broke out owing to the negligence of the defendant or his servants. It was admitted that the defendant was an "innkeeper." The question was whether an innkeeper was absolutely liable for injury to his guests' goods, as well as for their loss, especially by theft. The plaintiff's car was a "total loss" from the insurance aspect, but that use of the word did not apply to the liability of an innkeeper. In *Winkworth* v. *Raven* [1931] 1 K.B. 652, Swift, J., said there was no case in which an innkeeper had been held liable for injury to goods as opposed to their loss unless default on his part had been proved; he referred to *Maclenan* v. *Segar* [1917] 2 K.B. 325, where McCardie, J., traced the anomalous rule regarding the liability of innkeepers back to the days when there were dangers of their collusion with highwaymen. The courts to-day would hesitate to extend the rule, and *Winkworth* v. *Raven*, *supra*, was clear authority in the defendant's favour. The defendant was also protected from absolute liability by s. 86 of the Act of 1774, as his liability was a "custom of the realm" within that section. On the question of negligence, it was not incumbent on the defendant to prove how the fire happened. There was nothing to indicate positively how it happened, but it was plainly nothing to do with the stove. There was no evidence of negligence, and the action must be dismissed. Judgment for the defendant.

APPEARANCES: *J. Stephenson* (*Bond, Pearce, Eliot & Knape*, Plymouth); *D. Ackner* (*Nash, Howett, Cocks & Clapp*, Plymouth).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1293

PROBATE, DIVORCE AND ADMIRALTY DIVISION

HUSBAND AND WIFE: VALIDITY OF MARRIAGE: SECOND MARRIAGE: LACK OF EVIDENCE OF PREVIOUS HUSBAND'S EXISTENCE OR DEATH

Bradshaw *v.* Bradshaw

Lord Merriman, P., and Collingwood, J. 8th March, 1954

Appeal from justices.

The parties went through a ceremony of marriage in February, 1940, and in 1950 the wife was granted an order for maintenance by the justices on the ground of desertion. The wife had been married in India in 1916 to one Howard, then aged twenty-two. In 1921 Howard had been granted a decree *nisi* of divorce at Lucknow in an undefended suit on the ground of adultery. According to her evidence, that was the last occasion on which the wife had seen Howard, who was then said to be living with another woman. That decree was rescinded at Allahabad in 1922, although the wife was unaware of it, and continued to believe that the marriage had been dissolved. From a date prior to the divorce proceedings until his death a month or so before the 1940 ceremony, the wife lived with one Dennet; and after the decree *nisi* in 1921 she made no inquiries about Howard nor any attempt to trace him by means of army records or otherwise. In 1953, the husband in the present proceedings, who knew about the cohabitation with Dennet, learnt for the first time of the marriage to Howard and learnt also that the decree of 1921 had been rescinded. He applied for, and was granted, a revocation of the order of 1950 on the ground that the wife had not succeeded in proving that she was free to marry him in 1940 and that that marriage was therefore invalid. It was admitted that the information tendered about the marriage in 1916 and the 1921–22 proceedings was "fresh evidence" upon which the justices might act. The Divisional Court heard full oral evidence by the parties and a witness, and found the facts set out above. The court rejected, however, a statement by the wife that she had been told in 1931 by a sister of Howard that Howard had died. (*Cur. adv. vult.*)

LORD MERRIMAN, P., giving his judgment, said that although the fact that the wife had not heard from Howard was a matter which must be taken into account, so also must her failure to make any inquiries about him. There was, in the circumstances, therefore, nothing to raise a presumption that Howard had died before the ceremony in 1940. The jurisdiction of justices to deal with the complaints entrusted to them under the Summary Jurisdiction (Married Women) Act, 1895, was derived from the fundamental assumption that they were dealing with persons who could truly be called husband and wife; and the husband was therefore entitled to have the order for maintenance discharged.

COLLINGWOOD, J., concurred. Appeal dismissed.

APPEARANCES: *Mark B. Smith* and *H. S. L. Rigg* (*Robinson and Bradley*, for *Holden, Blanthorne & Davies*, Blackburn); *J. D. Moylan* (*Vizard, Oldham, Crowder & Cash*, for *Backhouse, Dunkerley & Isherwood*, Blackburn).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [3 W.L.R. 965

HUSBAND AND WIFE: NULLITY: PRESUMPTIONS OF CONTINUANCE OF LIFE AND OF DEATH

Chard *v.* Chard (otherwise Northcott), Hoye, Winstanley, Lord and Norris. Tickner intervening

Sachs, J. 18th November, 1955.

Defended petition in which both parties asked for a decree of nullity or alternatively of divorce.

A wife who was a party to a marriage in 1909 was last heard of in 1917 as a normally healthy woman who would, in 1933, have attained the age of forty-four. She had reasons for not wishing to be heard of by the husband, a man with a criminal record, and his family and it was not possible to trace anyone who, since 1917, would naturally have heard of her. No trace of the registration of her death could be found. In 1933, the husband went through a ceremony of marriage with the respondent in the present proceedings, in which both parties prayed for a decree of nullity on the ground that the 1933 ceremony was void for bigamy, and, in the alternative, for divorce. (*Cur. adv. vult.*)

SACHS, J., reading his judgment, said that on the facts the court could not accept the 1933 marriage certificate as evidence of the validity of the marriage and was put on inquiry as to the possibility of the 1909 wife being alive in 1933. In considering whether the presumption of continuance of life or of death applied, caution was to be exercised with regard to decisions and *dicta* derived from cases arising under statutory provisions enacting a convenient rule for particular matters. Where no statute laid down an applicable rule, the issue of whether a person was, or was not, to be presumed dead was generally speaking one of fact and not subject to a presumption of law. In cases of seven years' absence where no statute applied and in which no affirmative evidence of life could be shown, a presumption of law arose that the missing person died at some time within the seven-year period on proof that there were persons who would be likely to have heard of the missing person over that period, that those persons had not heard of him, and

that all due inquiries appropriate to the circumstances had been made. Applying those principles to the facts of the present case, the inference to be drawn from those known facts was that the 1909 wife was alive at the time of the 1933 ceremony. Decrees *nisi* of nullity to both parties.

APPEARANCES: *K. Bruce Campbell* (*G. Francis Wood, Law Society Divorce Department*); *R. L. Bayne-Powell* and *E. R. Moulton-Barrett* (*L. H. Whitlamsmith, Law Society Divorce Department*); *A. Gordon Friend* (*J. F. Coules & Co.*); *John Hazel* (*J. R. Spencer Young*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [3 W.L.R. 954

LEGAL AID: COSTS: TAXATION: OBJECTION: DUTY OF TAXING OFFICER

Eaves *v.* Eaves and Powell

Sachs, J. 2nd December, 1955

Summons for review of taxation of a bill of costs in a legally aided undefended divorce (adjourned into open court).

The suit was heard in April, 1955, at Bournemouth, and was undefended. In May, 1955, the bill of costs was taxed by the district registrar, who had taxed the bill which was the subject of an appeal in *Isaac* v. *Isaac* [1955] 3 W.L.R. 253; *ante*, p. 493 (in which Collingwood, J., held, on 4th July, 1955, that the fact that London counsel had appeared in two cases on the same day in Bournemouth was an irrelevant consideration). The registrar taxed counsel's brief fee down from seven guineas to five guineas. In June, 1955, an objection to this reduction was carried in under R.S.C., Ord. 65, r. 27 (39). That objection and the registrar's answer were in the following terms: " Reasons for objections. Counsel in this case attended the court from London and relying on the case of *Self* v. *Self* ([1954] P. 480) feels that seven guineas is a proper fee in this case. Counsel considers that because he had more than one case on the same day it should not affect the issue as a co-respondent should not benefit by the fact of counsel having more than one brief. Counsel therefore respectfully contends that each case should be allowed on its merits, and that the proper and correct fee in this case should be seven guineas." The observations of the district registrar were: " In accordance with the discretion vested in me I have fixed this fee having regard to the merits of the case and all other relevant circumstances." Just before the present application was due to be heard the solicitors to the husband, upon the advice of leading counsel, wrote to the registrar on 7th November, 1955, a letter calling attention to the terms of R.S.C., Ord. 65, r. 27 (40), and specifically asked him, *inter alia*, for the " reasons for the reduction," and for information as to what were the " other relevant circumstances " to which the observations referred. The registrar's reply of 8th November, 1955, read: " I regret that I am unable to assist you further in this matter. As you are aware, I gave the matter very full consideration and read the brief and other papers in this matter before fixing fee for counsel." An affidavit by the costs clerk who attended on the taxation was placed before the court at the hearing of the summons. (*Cur. adv. vult.*)

SACHS, J., reading his judgment, said that it was the duty of a taxing officer, on objection being taken to a taxation of a bill of costs, to make a full statement of all his grounds and reasons in arriving at the taxation, including a specific statement as to whether or not any of the matters complained of were considered. An omnibus statement that " the merits of the case and all other relevant circumstances " had been taken into account resulted in a failure to disclose the grounds on which discretion was exercised and tended to oust the jurisdiction of the court. His lordship held that, according to normal practice, the appropriate fee for London counsel briefed to appear in an undefended divorce cause in a town such as Bournemouth was more than five guineas; that as the registrar had not stated that there were any relevant facts or circumstances justifying a departure from that practice it was to be assumed that none existed and a clear inference arose that some irrelevant circumstance had been taken into consideration; and that counsel's brief fee must, therefore, be adjusted to seven guineas. During the course of his judgment his lordship, referring to the affidavit and to the district registrar's previous taxation in *Isaac* v. *Isaac*, *supra*, said that R.S.C., Ord. 65, r. 27 (40), provided a specific method by which the court was to be informed of a registrar's reasons in making a taxation, and it was undesirable that the court should be forced to have recourse to inferences drawn from what a taxing officer had done in previous cases. It was, moreover, doubtful whether the court could, as a general rule, look at a statement *aliunde* as to what the registrar might have said as to his reasons. His lordship also said that the question of the procedure and of the incidence of liability for costs on taxation points arising under Sched. III to the Legal Aid and Advice Act, 1949, might need review in the light of the problems which had now become evident, particularly where points of principle emerged. Order accordingly.

APPEARANCES: *Denis Robson*, Q.C., and *R. Armitage* (who did not appear at the hearing) (*Kinch & Richardson*, for *Cyril Clark*, Bournemouth).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law [3 W.L.R. 984

LEGAL AID: COSTS: TAXATION: PRINCIPLES

Francis *v.* Francis and Dickerson

Sachs, J. 2nd December, 1955

Summons to review taxation of assisted person's solicitor and client costs in defended divorce suit (adjourned into court).

The solicitors for a legally aided wife respondent were informed by their client that she had grounds to suspect the husband of adultery although he did not pray in his petition for the discretion of the court. They caused inquiries to be made accordingly, and took counsel's advice as to the desirability of continuing those inquiries, which ultimately led to a confession of adultery and an amendment to ask for discretion. At the trial both parties were granted decrees, the husband on the ground of the wife's admitted adultery, the wife on the ground (as originally prayed) of constructive desertion. (The trial judge refused the wife leave to amend her answer to allege adultery.) On the solicitor and client taxation the district registrar at Lincoln disallowed the expense of the inquiries, stating that it was the duty of solicitors to do all they properly could to protect the fund, that the wife's solicitors had failed to discharge that duty, and that they had gone beyond what was " absolutely necessary " in the interests of their client. He further reduced the charge for instructions for brief from eighty guineas to twenty guineas, and disallowed the items for instructions to, and advice of, counsel. Objections were taken. The wife's civil aid certificate was expressed to be " to defend proceedings for divorce brought by [the husband] including a prayer for relief, if necessary." No order for costs was made *inter partes*. (*Cur. adv. vult.*)

SACHS, J., reading his judgment, said that he appreciated the manner in which the district registrar had complied with the duty cast upon him by R.S.C., Ord. 65, r. 27 (40) in fully setting out the grounds upon which items had been disallowed. Referring to the wording of the civil aid certificate, the construction of which had caused the district registrar difficulty, his lordship said that the words " including a prayer for relief " had no sense unless they entitled the respondent wife to raise allegations which would and in fact did result in a cross-prayer. It was to be hoped that no further certificate would be issued in that unfortunate form, for it was essential that civil aid certificates should be clear, so as to enable all concerned to understand exactly what they meant. His lordship, during the course of his judgment, referred to a passage in the observations of the district registrar as a basis for his taxation: " To quote a former senior registrar, it is the duty of solicitors ' to do all they properly can to protect the fund and thereby the interests of the taxpayer,' a duty which respondent's solicitors have failed to discharge. They have also gone beyond what was absolutely necessary in the interests of their client," and said that that paragraph combined within itself two fallacies and disclosed an erroneous approach to the particular matters under consideration—and to legal aid taxations in general. Firstly, the primary duty—and so long as a case was conducted reasonably within the ambit of the civil aid certificate, the only duty—of a solicitor in conducting an assisted case was to his client. Not only was that the general intent of the Legal Aid and Advice Act, 1949, but s. 1 (7) (*a*) specifically stated that—saving only certain express exceptions—the solicitor's " relationship with " (which naturally included " his duties to ") his client remained unaffected by the fact that the client was an assisted person. Indeed, one of the fundamental principles upon which the legal aid system was based was that the assisted person, his solicitor and his counsel, had the same freedom in the conduct of an assisted case, and were entitled to the benefit of the same relationships, as in a similar matter where the lay client was not an assisted person. Solicitor and counsel had thus to approach the consideration of any problem as to incurring reasonable expense to attain justice in an assisted case in the same way as if

the lay client were a person whose means enabled him to fight that particular case in a reasonable manner. The second fallacy inherent in the observation cited lay in the phrase containing the words "absolutely necessary." Such a phrase had certainly no place on "a taxation as between solicitor and client where the costs are to be paid out of a common fund in which the client and others are interested." Nor would it have made matters better if the word "absolutely" had been omitted. The words in R.S.C., Ord. 65, r. 27 (29), were "necessary or proper": and "proper" had always been construed as "reasonably incurred." Indeed, "reasonable," "proper" and "reasonable and proper" were obviously interchangeable expressions in the context under consideration—and all included something beyond what was meant by "necessary" in the sense that it appeared to be used in the observation of the district registrar. When considering whether or not an item in a bill of costs was "proper" the correct viewpoint to be adopted by a taxing officer was that of a sensible solicitor sitting in his chair and considering what in the light of his then knowledge was reasonable in the interests of his lay client, who should be deemed a man of means adequate to bear the expense of the litigation out of his own pocket—and "adequate" meant neither "barely adequate" nor "super abundant." That was a very different angle from that called to mind by the registrar's observation; it was wrong for a taxing officer to adopt an attitude akin to a revenue official called upon to apply rigorously one of those income tax Act rules as to expenses which had been judicially described as "jealously restricted" and "notoriously rigid and narrow in their operation." Where a solicitor *bona fide* acting in what he considered the best interests of his client had incurred expenditure which would fall, unless allowed on legal aid taxation, on him personally, it would be wrong for the court to be astute in seeking reasons to disallow the items. As regards such honestly incurred expenditure the taxing officer on a "common fund" taxation should take a "liberal view." It was the standard, and proper, view of taxing officers that as a general rule a solicitor acting on the advice of properly instructed counsel could hardly be said to be acting unreasonably. His lordship then considered the items in issue and said that the registrar had erred in principle as to the primary duty of a solicitor conducting an assisted case, and as to what was necessary in the client's interest, and had failed properly to take into account the fact that the solicitors had obtained counsel's advice. His lordship held that the expenses of the inquiries had been reasonably incurred; even on the footing that the wife's certificate had been restricted to an authority to defend, where there were good grounds for suspecting a petitioner of adultery the respondent's solicitors would be doing less than their duty if they did not take reasonable steps to ascertain the true position. Although, however, the figure of twenty guineas for instructions for brief was the lowest permissible figure at which the item could have been taxed, and something quite distinctly more was normally to be expected, the quantum was not such as to justify review; but an additional twenty-five guineas should be allowed for the expenses of the inquiries. The items for instructions to, and advice of, counsel were restored. Order accordingly.

APPEARANCES: *Trevor Guest* (who did not appear at the hearing) (*Theodore Goddard & Co.*, for *Browne & Wells*, Northampton).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[3 W.L.R. 973**

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Dundee Corporation Bill [H.C.] [8th December.

Rabbits (Prohibition of Spreading) Bill [H.L.] [8th December.

To prohibit the spreading of rabbits.

Read Second Time:—

Expiring Laws Continuance Bill [H.C.] [8th December.

Read Third Time:—

Therapeutic Substances Bill [H.L.] [8th December.

In Committee:—

Administration of Justice Bill [H.L.] [8th December.
Copyright Bill [H.L.] [6th December.
Education (Scotland) Bill [H.L.] [8th December.
Police (Scotland) Bill [H.L.] [8th December.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Children and Young Persons Bill [H.C.] [7th December.

To extend the provision of the Children and Young Persons Act, 1933, and the Children and Young Persons (Scotland) Act, 1937, with respect to escapes from the care of fit persons, from approved schools and from remand homes or special reception centres.

Read Second Time:—

Hillingdon Estate Bill [H.L.] [7th December.
Teachers (Superannuation) Bill [H.C.] [6th December.

B. QUESTIONS

RENT RESTRICTIONS ACTS (REVIEW)

Mr. DUNCAN SANDYS said that in due course he would make a further statement about his proposed review of the Rent Restrictions Acts. [2nd December.

FRONTAL LEUCOTOMY (CONSENT TO OPERATION)

Mr. IAIN MACLEOD stated that in 1952 the number of frontal leucotomy operations performed on involuntary patients in mental hospitals in England and Wales was 1,355. Asked what permission was obtained, in view of the fact that the operation caused a change of personality, he said that the decision to perform any operation on a mental patient under detention was one for the medical practitioner concerned, having regard to his duty to protect the patient's life and health. It was normal practice for the consent of the nearest relative to be obtained, if possible, and it was also customary for more than one doctor to be concerned in the decision to operate. [5th December.

STATUTORY TRIBUNALS (LEGAL REPRESENTATION)

Mr. A. J. IRVINE asked the number of statutory tribunals in addition to the local tribunals of the Ministry of Pensions and National Insurance before whom parties were expressly, by the relevant statute or statutory instrument, not allowed to be represented by barristers or solicitors.

The ATTORNEY-GENERAL said there was no express prohibition in respect of any tribunal for which the Lord Chancellor was responsible. No information about other tribunals was available in his own department and he did not think the work involved in obtaining it would be justified. [5th December.

MAIL DELIVERIES (LINCOLN'S INN)

Dr. CHARLES HILL said that owing to shortage of staff and heavy mails it had occasionally been impossible to finish the first delivery in New Square, Lincoln's Inn, until shortly after 9 a.m. The Post Office were doing all they could to see that the delivery was regularly completed by 9 a.m. [5th December.

LOCAL AUTHORITIES' LOANS (TRUSTEE STATUS)

Asked whether, in view of the alteration in the method of local government borrowing, he would introduce legislation to confer trustee status on loans issued by urban and rural district councils, Mr. R. A. BUTLER said that some of these authorities already had trustee status for their loans. Proposals to extend it to all of them had been announced on 27th July by the Financial Secretary to the Treasury. The proposals had since been agreed with representatives of the local authorities and would be the subject of legislation when opportunity offered. [6th December.

DOCTRINE OF CONSTRUCTIVE MALICE (REPORT)

Major LLOYD-GEORGE said that the Royal Commission on Capital Punishment, although recommending that the doctrine of constructive malice should be abolished, had said that "the practical effect of the doctrine of constructive malice at the present

day is very limited and we cannot think that its abolition would lead to any striking change in the practice of the courts." The recommendation would, however, be considered when some prospect of legislation on the subject could be seen. [8th December.

MOTORIST (CONVICTION)

Major LLOYD-GEORGE said that he had found no grounds for recommending a free pardon to a motorist who had been disqualified for twelve months because it was held that the vehicle concerned was not insured, whereas an official of the company concerned had said that it would have been held covered in the circumstances. These grounds had been before the court which had convicted, and the defendant had not appealed. He could, if he wished, apply after six months to have the disqualification removed. [8th December.

CONVICTED PERSONS (CONSORTING)

Major LLOYD-GEORGE refused to introduce legislation similar to that in Victoria, Australia, under which persons habitually consorting with convicted criminals were liable to conviction and punishment. It would be quite contrary to the principles of our legal system for a father consorting with his convicted son to have to prove that his consorting was innocent. [8th December.

CHARITABLE TRUSTS

Major LLOYD-GEORGE said that the White Paper on Government Policy on Charitable Trusts in England and Wales (Cmd. 9538) set out the nature of the legislation which was considered necessary to deal with the position of those charitable trusts which were now unable to carry out the functions for which they had been originally designed. The preparation of such legislation would take some time, and he could hold out no hope of legislation this session. [8th December.

YOUNG PERSONS (REMAND CENTRES)

Major LLOYD-GEORGE said that between 1st August and 31st October, 1955, fourteen persons between the ages of seventeen and twenty-one years had been remanded in prison before being sentenced to detention. In some cases it might be that they were so remanded until the magistrates could decide what to do. He would look into the suggestion that such remands were due to the fact that there were insufficient remand centres. [8th December.

WATT *v.* KESTEVEN COUNTY COUNCIL

Asked if he was aware of the effect of the decision in *Watt* v. *Kesteven County Council* upon the application of s. 76 of the Education Act, 1944, Sir DAVID ECCLES said the decision endorsed the advice given to local authorities in the Manual of Guidance issued by his department in 1950, which he considered to be sound. [8th December.

HALL-MARKING LAWS (DEPARTMENTAL COMMITTEE)

Mr. P. THORNEYCROFT said that the members of the Departmental Committee on Hall-marking Laws under the chairmanship of Sir Leonard Stone, O.B.E., would be Lady Sempill, The Hon. W. D. Watson, W.S., Dr. J. H. Watson, M.B.E., M.C., Ph.D., B.Sc., A.R.S.M., M.I.M.M., F.I.M., Mr. J. F. Brown and Mr. R. H. King. The terms of reference of the Committee were to examine the state of the law on the assaying and hall-marking of precious metals, including the passing off of base metals as precious metals, and to recommend what revision of the law is desirable in the light of present-day conditions. [9th December.

STATUTORY INSTRUMENTS

African Territories (Imperial Statute Extension) (Amendment) Order, 1955. (S.I. 1955 No. 1823.)

Air Force Act, 1955 (Commencement) Order, 1955. (S.I. 1955 No. 1806 (C. 16).)

Army Act, 1955 (Commencement) Order, 1955. (S.I. 1955 No. 1805 (C. 15).)

Cinematograph Films (Registration) (Amendment) Regulations, 1955. (S.I. 1955 No. 1827.)

Corset Wages Council Wages Regulation (Amendment) Order, 1955. (S.I. 1955 No. 1781.) 5d.

County Court (Amendment) Rules, 1955. (S.I. 1955 No. 1799 (L. 14).) 11d. See p. 839, *ante*.

Dominica (Legislative Council) (Amendment) Order in Council, 1955. (S.I. 1955 No. 1815.) 5d.

East Africa (High Commission) (Amendment No. 2) Order in Council, 1955. (S.I. 1955 No. 1818.)

East African Territories (Air Transport) (Amendment) (No. 2) Order in Council, 1955. (S.I. 1955 No. 1819.)

Emergency Laws (Continuance) Order, 1955. (S.I. 1955 No. 1813.)

Emergency Laws (Miscellaneous Provisions) (Colonies, etc.) Order in Council, 1955. (S.I. 1955 No. 1814.)

Fire Services (Conditions of Service) (No. 3) Regulations, 1955. (S.I. 1955 No. 1826.) 8d.

Fire Services (Conditions of Service) (Scotland) Amendment No. 2 Regulations, 1955. (S.I. 1955 No. 1828 (S. 143).) 8d.

Grenada (Legislative Council) (Amendment) Order in Council, 1955. (S.I. 1955 No. 1816.) 5d.

Ipswich — Newcastle — Cambridge — St. Neots — Bedford — Northampton — Weedon Trunk Road (Lavendon By-Pass) Order, 1955. (S.I. 1955 No. 1824.)

Legal Aid (General) (Amendment No. 2) Regulations, 1955. (S.I. 1955 No. 1829.) 6d. See p. 839, *ante*.

London — Edinburgh — Thurso Trunk Road (Waterford and Cottage Inn Diversions) Order, 1955. (S.I. 1955 No. 1789.)

Merchant Shipping (Safety Convention Countries) (Various) (No. 2) Order, 1955. (S.I. 1955 No. 1803.)

National Insurance (Determination of Claims and Questions) Amendment Regulations, 1955. (S.I. 1955 No. 1788.) 5d.

Nigeria Protectorate and Cameroons (Imperial Statutes Extension) Order in Council, 1955. (S.I. 1955 No. 1820.)

Paddington (Councillors and Wards) Order, 1955. (S.I. 1955 No. 1801.) 6d.

Patents (Extension of Period of Emergency) Order, 1955. (S.I. 1955 No. 1812.)

Probation (No. 2) Rules, 1955. (S.I. 1955 No. 1800 (L. 15).)

Registered Designs (Extension of Period of Emergency) Order, 1955. (S.I. 1955 No. 1811.)

Registration of Title (Oldham) Order, 1955. (S.I. 1955 No. 1804.) See p. 840, *ante*.

Retention of Pipes Under Highways (Gloucestershire) (No. 2) Order, 1955. (S.I. 1955 No. 1786.)

Revision of the Army and Air Force Acts (Transitional Provisions) Act, 1955 (Appointed Day) Order, 1955. (S.I. 1955 No. 1807 (C. 17).)

Saint Vincent (Legislative Council) (Amendment) Order in Council, 1955. (S.I. 1955 No. 1817.) 5d.

Stopping up of Highways (Berkshire) (No. 4) Order, 1955. (S.I. 1955 No. 1785.)

Stopping up of Highways (Derbyshire) (No. 6) Order, 1955. (S.I. 1955 No. 1784.)

Stopping up of Highways (East Sussex) (No. 6) Order, 1955. (S.I. 1955 No. 1790.)

Stopping up of Highways (Gloucestershire) (No. 9) Order, 1955. (S.I. 1955 No. 1783.)

Stopping up of Highways (Kent) (No. 20) Order, 1955. (S.I. 1955 No. 1792.)

Stopping up of Highways (Lanarkshire) (No. 1) Order, 1955. (S.I. 1955 No. 1797.)

Stopping up of Highways (Liverpool) (No. 2) Order, 1955. (S.I. 1955 No. 1793.)

Stopping up of Highways (London) (No. 52) Order, 1955. (S.I. 1955 No. 1794.)

Stopping up of Highways (Norfolk) (No. 2) Order, 1955. (S.I. 1955 No. 1791.)

Stopping up of Highways (Somerset) (No. 5) Order, 1955. (S.I. 1955 No. 1782.)

Supplies and Services (Continuance) Order, 1955. (S.I. 1955 No. 1810.)

Tin Box Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1955. (S.I. 1955 No. 1795.) 5d.

Voluntary Homes (Return of Particulars) Regulations, 1955. (S.I. 1955 No. 1839.)

West African (Appeal to Privy Council) Order in Council, 1955. (S.I. 1955 No. 1822.)

West African Court of Appeal (Amendment) Order in Council, 1955. (S.I. 1955 No. 1821.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, W.C.1. The price in each case, unless otherwise stated, is 4d. post free.]

NOTES AND NEWS

Honours and Appointments

Mr. REGINALD PRIDHAM BAULKWILL, C.B.E., has been appointed the Public Trustee with effect from 1st January, 1956, in succession to Sir Wyndham Hirst, K.B.E., who will be retiring.

Mr. JOHN SYDENHAM MARSHALL, solicitor, of Stoke-on-Trent, has been appointed county coroner for the North Staffordshire district in succession to Mr. S. A. H. Burne, who will be retiring at the end of the year.

The Queen has been pleased to appoint Mr. R. O. SINCLAIR, Chief Justice, Nyasaland, to be Vice-President of the East African Court of Appeal.

Personal Notes

Mr. Tom Millward Elias, solicitor, of Birmingham, and clerk to the Birmingham Justices for eleven years, is to retire next March after thirty-five years at the Victoria Law Courts.

Mr. E. Lawrence Thackray, LL.M., solicitor, of Huddersfield, has been appointed vice-president of the Huddersfield Authors' Circle for the year 1956.

Mr. Albert Nixon, of Wibsey, Bradford, chief clerk of Bradford Town Clerk's Department, is to retire on 31st December, after thirty-two year's service with the department.

OBITUARY

MR. B. R. MASSER

Mr. Bernard Richard Masser, solicitor, of Coventry, has died, aged 72. He was for many years the deputy coroner of Coventry and North Warwickshire. He was admitted in 1907.

Mr. H. A. PRITCHARD

Mr. Herbert Arthur Pritchard, retired solicitor, of Leicester, and a former deputy town clerk of Birmingham, died on 4th December, aged 82. He was admitted in 1898.

MR. H. QUENNELL

Mr. Hugh Quennell, solicitor, of Tokenhouse Yard, London, E.C.2, died on 4th December, in New York. He was admitted in 1926.

SOCIETIES

The annual dinner of the BLACKBURN INCORPORATED LAW ASSOCIATION was held at Samlesbury Hall, near Blackburn, on 1st December. Among the distinguished guests were The Lord Bishop of Blackburn, the Right Rev. W. H. Baddeley, D.S.O., M.C., M.A., His Honour Judge Walmsley, Q.C., and His Honour Judge G. Maddocks. Judge Maddocks proposed the toast of The Association, which was responded to by the president, Mr. C. G. B. Blanthorne. The town clerk, Mr. C. S. Robinson, O.B.E., proposed the toast of The Guests, to which The Lord Bishop of Blackburn and Mr. J. Di V. Nahum, Q.C., replied.

The annual general meeting of the LEICESTER LAW SOCIETY was held on 17th November, and was attended by sixty-five members. The following officers were elected: President, Mr. S. H. Partridge; Vice-President, Mr. C. E. J. Freer; Hon. Treasurer, Mr. J. Tempest Bouskell; Hon. Secretary, Mr. B. E. Toland; Hon. Librarian, Mr. R. D. G. Williams. Mr. A. Denham Foxon was re-elected to the committee, and Messrs. W. E. Hebden and W. W. Straw were elected in place of Mr. G. Day Adams and Mr. M. H. Moss, who have retired.

The following resolutions were carried: that The Law Society be urged to recommend to the profession an unofficial scale of costs for probate and administration matters, such scale to be by way of a guide only; that it was expedient and desirable that university status be granted to the University College of Leicester, and further, that if and when such status is conferred and as soon as it is practicable so to do, a school of law be established for the purpose of granting degrees in law and that it be recognised as an approved law school in accordance with the provisions of the Solicitors Acts; and that the committee be requested to consider the best means of organising the support of members to the university appeal fund.

CASES REPORTED IN VOL. 99

15th October to 17th December, 1955.

Lists covering all cases reported earlier this year appear in the Interim Index (to 25th June) and at p. 632, *ante* (2nd July to 20th August).

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